IN THE COURT OF APPEALS OF IOWA

No. 0-445 / 10-0259
Filed June 30, 2010

IN THE MATTER OF F.P.,
Alleged to Be Seriously Mentally Impaired,

F.P.,
Respondent-Appellant.

Appeal from the Iowa District Court for Clay County, Charles K. Borth, District Associate Judge.

Respondent appeals from the district court's decision finding that he is seriously mentally impaired and is a danger to himself or others. **APPEAL DISMISSED.**

John Greer of Greer Law Office, Spencer, for appellant.

Thomas J. Miller, Attorney General, Gretchen Witte Kraemer, Assistant Attorney General, and Michael Houchins, County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

POTTERFIELD, J.

I. Background.

F.P. is an octogenarian who came to the attention of the court system by way of an application alleging serious mental impairment filed in Clay County. The application and affidavit were filed by a Department of Motor Vehicles employee, Amy Sievers. Sievers described several encounters with F.P., who was attempting to get his driver's license renewed.

Also submitted with Sievers's application was the affidavit of Julie Johnson, whom Sievers described as being from Northwest Iowa Aging. Johnson asserted she joined F.P. and Sievers at the driver's license station on January 27 and F.P. had no recollection of his address in Everly, was still confused on why his license will expire, had missed several appointments with the Sioux Falls VA, refused to use the VA van to get to doctor appointments, and refused Lifeline services or any other community-based services to assist with appointments, groceries, medication set-up, etc.

The court issued an order for immediate custody and scheduled a hearing at the Clay County courthouse for February 1, 2010.

On February 1, 2010, the county attorney and attorney for F.P. were at the courthouse. The district associate judge was on the telephone, being physically located elsewhere. F.P. participated by telephone from the hospital. F.P.

informed the court immediately that he did not have his hearing aids and was not able to hear well.[1]

The court stated it had "received a copy of the Physician's Report of Dr. Segreto and will admit that into the record." The county attorney did not offer Segreto's report into evidence, and Segreto did not appear in person or by telephone.

Segreto had completed a "physician's report of examination pursuant to Iowa Code section 229.10(2)" form.[2] On that form, Segreto stated she had examined F.P. between January 28th and February 1st, the date of the hearing. She stated that F.P. had no history of mental illness. Segreto diagnosed F.P. as mentally ill, with a diagnosis of "dementia, probably of the Alzheimer's type." Segreto indicated F.P. was not capable of making responsible decisions with respect to hospitalization or treatment. As supporting facts, Segreto wrote: "Dementia. Short term memory is very poor. Insight is nonexistent. Judgment is poor. Patient does not believe anything is wrong with him." Segreto also indicated F.P. was likely to injure himself or others, writing "short term memory is extremely poor. Dementia patients wander + concern is that he will get lost." Segreto further wrote, "The patient is not safe without continuous supervision due to his short term memory loss."

Amy Sievers did not testify. Johnson testified that Sievers had called her and told her that F.P. came to the DOT office numerous times, was confused,

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[1] The proceedings were tape recorded, and the word "inaudible" appears in various parts of the transcript. This may indicate there might have been poor sound quality for the participants at the three different locations.

[2] All statutory citations are to the current version of the Iowa Code.

and despite repeated instructions, did not understand the procedures or what he needed to do to obtain or keep his license. She testified she did a "clock drawing" and F.P. was not able to draw a basic clock and put hands into a specific time. She further testified that F.P.'s memory impairment was very significant and it appeared he was suffering from some sort of dementia.

F.P. testified, but it is evident he was not able to hear well. F.P.'s stepdaughter, a nurse of twenty-two years, testified that she did not believe F.P. was mentally ill or a danger to himself or others.

Following the hearing, F.P.'s attorney informed the court that F.P. wanted to be present for the hearing, but hospital staff would not allow his stepdaughter to transport him.

The court ruled F.P. suffered from a serious mental impairment and ordered him hospitalized.

F.P. appealed, contending statutory procedures were not followed and there was insufficient evidence to support commitment. The State now moves to dismiss the appeal, since F.P. has been discharged and his involuntary commitment has been terminated.

II. Merits.

One principle of judicial restraint is that courts do not decide cases when the underlying controversy is moot. *Rhiner v. State*, 703 N.W.2d 174, 176 (Iowa 2005). "A case is moot if it no longer presents a justiciable controversy because the issues involved are academic or nonexistent." *Baker v. City of Iowa City*, 750 N.W.2d 93, 97 (Iowa 2008). The test to determine if a case is moot is whether an opinion would be of force or effect in the underlying controversy. *Iowa Mut. Ins.*

Co. v. McCarthy, 572 N.W.2d 537, 540 (Iowa 1997). Because F.P. has been discharged, our decision would have no effect on the underlying action; thus, the case is moot.

However, we will consider moot issues on appeal under certain circumstances. In deciding whether to review a moot issue, we consider four factors: (1) the private or public nature of the issue; (2) the desirability of an authoritative adjudication to guide public officials in their future conduct; (3) the likelihood of the recurrence of the issue; and (4) the likelihood the issue will recur yet evade appellate review. *State v. Hernandez-Lopez*, 639 N.W.2d 226, 235 (Iowa 2002). The Iowa Supreme Court has held that "[t]he procedural aspects of an involuntary civil commitment hearing are of great public importance." *In re T.S.*, 705 N.W.2d 498, 502 (Iowa 2005) (citing *In re M.T.*, 625 N.W.2d 702, 705 (Iowa 2001)). "Because a person's liberty interests are at stake, it is imperative that the statutory requirements and procedures [of the involuntary commitment statutes] be followed.'" *Id.* (quoting *In re M.T.*, 625 N.W.2d at 706). The supreme court exercised its discretion to reach the merits of the issue presented by the appellants in *In re M.T.* and *In re T.S.* because both were statutory procedural issues that were likely to reoccur. *See In re M.T.*, 625 N.W.2d 705; *In re T.S.*, 705 N.W.2d 502.

F.P.'s appeal asserts the following procedural violations. Section 229.12(1) provides that the respondent has a right to be present at the hearing. Even assuming a telephonic appearance might qualify under some circumstances, the State agrees that it was likely inadequate in light of F.P.'s inability to hear and his wish to be present in court.

Section 229.12(3) provides that the examining physician or mental health professional "shall be present at the hearing unless the court for good cause finds [the person's] presence or testimony is not necessary." If the court determines that the testimony is necessary, the court may permit the physician or mental health professional to testify by telephone. Iowa Code § 229.12(3). The physician's appearance in person or by telephone is required to allow the respondent to cross-examine the physician. *In re T.S.*, 705 N.W.2d at 504. Here, Segreto was not present at the hearing and did not testify in person or by telephone, and F.P. had no opportunity to cross-examine Segreto.

Moreover, there is no finding by the court that the doctor's presence or testimony was not necessary, and no waiver appears in the record. *See* Iowa Code § 229.12(3) (stating a waiver of the physician's presence by the applicant, respondent, and respondent's attorney may constitute good cause).

These procedural imperatives have been discussed in our previous cases or are unlikely to reoccur. F.P.'s sufficiency of evidence claims are also unlikely to reoccur in the same context. Further opinion will add nothing to our jurisprudence.

Because the underlying commitment has been dismissed, the issues on appeal have been rendered moot and we dismiss the appeal.

APPEAL DISMISSED.